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International Convention for the Protection of All Persons from Enforced Disappearance

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**Committee on Enforced Disappearances**
**Eighth session**

**Summary record of the 123rd meeting**
Held at the Palais Wilson, Geneva, on Wednesday, 4 February 2015, at 10 a.m.

*Chairperson*: Mr. Decaux

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*Initial report of Armenia* (continued)

* No summary record was prepared for the rest of the meeting.

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*The meeting was called to order at 10 a.m.*

**Consideration of reports of States parties to the Convention** (*continued*)

*Initial report of Armenia* (continued) (CED/C/ARM/1 and CED/C/ARM/Q/1)

1. *At the invitation of the Chairperson, the delegation of Armenia took places at the Committee table.*

2. **Mr. Abgaryan** (Armenia), responding to a question posed earlier by Mr. Camara, said that the punishments provided for in Armenian law for acts of enforced disappearance were not commensurate with the seriousness of the crime. As it stood, if such a crime were brought to the attention of the authorities, the suspect would be charged under the Criminal Code of the Republic of Armenia with offences corresponding to different elements of the act of enforced disappearance, rather than with the offence of enforced disappearance as such. However, amendments to the Criminal Code, which were currently in the drafting and consultation phase, would classify it as a separate offence. The amendments still fell somewhat short of the mark, however, since, although they set out rigorous punishments for the offence of enforced disappearance, they categorized it as a "grave" offence, rather than as an "extremely grave" offence. The definition set out in article 2 of the Convention was addressed by article 391 bis of the draft amendments. The new text might also resolve the issue of the statute of limitations since, although the law stipulated that the statute would enter into effect 15 years after the commission of the crime, the courts would be able to decide whether to apply it or not.

3. Turning to an earlier question about cases in which an official had issued an order that had resulted in an enforced disappearance, he said that only that official would be held accountable unless the order was manifestly unlawful, in which case the person carrying out the order would also be brought before the courts.

4. Regarding the involvement of civil society in the formulation of amendments to the Criminal Code, it should be noted that the drafts of such amendments, as well as the State party's report to the Committee, were posted on the website of the Police of the Republic of Armenia in order to ensure that members of civil society were informed of new developments and could comment on them, thus helping to identify and address gaps in the legislation before it was adopted. The views and concerns of civil society were invariably taken into account in the development of new legislation.

5. As to the doubts raised earlier about the difficulty of tracking cases of enforced disappearance in the absence of legal provisions dealing specifically with that offence, such cases were monitored by examining the data on all crimes stored in the central police database. That information made it possible to clearly identify cases of enforced disappearance.

6. The agency tasked with investigating cases of enforced disappearance was an independent authority. Its director was appointed for a term of six years by the President in consultation with the Prime Minister, and it was staffed by a core team of highly experienced investigators. In-service training was provided on a regular basis to upgrade the skills of investigators and the police.

7. In the preceding meeting, there had been a misunderstanding regarding the way that crimes committed in military units were handled. The law provided that the authority to investigate crimes committed by military personnel was to be determined on the basis of the type of crime concerned. In all cases, criminal proceedings could, of course, be instituted upon disclosure of a crime without the need to conduct preliminary investigations, whether the case involved the military or not.

8. **Ms. Avoyan** (Armenia), responding to an earlier question, said that, in line with article 2 of the Convention, the draft amendments to the Criminal Code established that the placement of a person outside the protection of the law was inevitably a consequence of the crime of enforced disappearance. As for the earlier confusion regarding the delegation's explanation about the action taken in respect of a continuous crime, under Armenian law, such a crime comprised a situation in which the criminal act in question had ended but the corresponding criminal situation persisted. Thus, in all cases of enforced disappearance, the investigation continued until the victim's whereabouts were discovered. The explanation given during the preceding meeting had focused on the termination of the crime, not of the investigative process.

9. **Ms. Melikyan** (Armenia), in response to an earlier question about the need for a separate law on the investigation of cases involving enforced disappearance, said that she would like to clarify the fact that, while international treaties had primacy over other laws and were directly applicable in the State party, a separate law was needed in order to define the investigative methods to be used and the specific punishments to be imposed.

10. The Human Rights Defender in Armenia was elected by Parliament. The person holding that post worked independently but in close cooperation with local governments and civil society. While NGOs had not been directly involved in consultations on the draft amendments, comments from NGOs had been transmitted through the Human Rights Defender and were being taken into consideration.

11. **Mr. Camara** asked whether Armenian legislation provided for any exception to the principle of non-refoulement as set out in article 16 of the Convention. Did the State party envisage amending its laws in order to align them with the principle of non-refoulement in cases where persons would be in danger of being subjected to enforced disappearance in the country to which they would be returned?

12. He would be interested to learn what the legal requirements were concerning the registration of arrests and detentions, whether anyone could access those registers other than the competent authorities and which authorities were responsible for ensuring that those registers were kept up to date. What types of penalties were provided for in cases where the police failed to record all the pertinent details in the register? He would be grateful if the delegation would describe the procedures used when transferring a detainee from one centre to another, including the procedures pertaining to the notification of family members, doctors and lawyers. Under what conditions was a "forcible placement" in a medical or correctional institution permitted? When a member of the military was detained, was his or her family informed? Lastly, he wondered whether the draft law on the protection of personal data dealt specifically with data protection issues in cases of enforced disappearance.

13. **Ms. Janina** asked how the independence of the Human Rights Defender was guaranteed and what budget was allocated for the Defender's work. Did the Office of the Human Rights Defender also perform the functions of the national preventive mechanism? Was the Office authorized to receive complaints regarding cases of enforced disappearance and, if so, had any complaints been submitted? It was her understanding that there were plans to establish a separate ombudsman for members of the armed forces. What powers would be conferred upon the person holding that post? She would appreciate further details on the training provided to military and judicial personnel. She would also like clarification on the legal definition of a victim of enforced disappearance and wished to know which authority was empowered to declare that a given person was a victim of that crime. What legal provisions were in place to safeguard the right of victims of enforced disappearance and their families to know the truth and to participate in legal proceedings? What measures had been adopted to ensure that every effort was made to search for and locate disappeared persons in conformity with article 24, paragraph 3, of the Convention? She would like to

know what non-financial forms of reparation and social rehabilitation services were offered to victims.

14. She wondered whether the amendments to the Criminal Code would include a specific definition of the crime of the wrongful removal of children in accordance with article 25 of the Convention. Would the delegation please explain how the best interests of the child were protected under Armenian law and describe the measures taken to ensure that children who were capable of forming their own views could express those views freely?

15. **Mr. Yakushiji**, referring to article 24 of the Convention and articles 1058 and 1064 of the Civil Code of the State party, said that he would be interested to learn whether the family of a disappeared person could claim damages while the whereabouts of the person remained unknown. The definition of the term "victim" set out in the Code of Criminal Procedure excluded family members of a direct victim unless that victim was dead or unable to express his or her will. Were there plans to amend that rather narrow definition? He wished to know whether there was any administrative procedure whereby the families of disappeared persons could exercise their right to know the truth.

16. **Mr. Hazan** asked whether an adoption could be annulled when it had originated in the enforced disappearance of the parents and whether, in such cases, children could be placed with relatives instead of becoming wards of the State.

17. **Mr. Al-Obaidi** said that he wondered how the State party could prosecute persons for carrying out an enforced disappearance abroad when it was not an offence under Armenian law. Paragraph 141 of the report appeared to imply that genetic data could be used for purposes other than those outlined in article 19 of the Convention. In reference to article 21 of the Convention, he wished to know how the authorities ensured that persons deprived of their liberty were actually released when they were supposed to be.

18. **Mr. Corcuera Cabezut** asked whether the family of a disappeared person could exercise that person's rights without having to obtain a certificate of presumption of death or whether the legal framework forced them to relinquish their right to presume that the person was still alive.

*The meeting was suspended at 11 a.m. and resumed at 11.20 a.m.*

19. **Ms. Melikyan** (Armenia) said that, although the Office of the Human Rights Defender was financed by the State budget, the Office was free to allocate the funds as it saw fit. It had unimpeded access to all government institutions, including places of detention, without prior notice and had the authority to interview individuals and propose legislative amendments. Although the Human Rights Defender had been involved in the preparation of the report, no information had been provided on any cases of enforced disappearance. The establishment of a military ombudsman was envisaged under the National Strategy on Human Rights Protection, but the status of the proposal, which was to have been submitted by the end of 2014, was unknown.

20. **Mr. Tumanov** (Armenia), acknowledging that the Criminal Code did not yet contain a definition of enforced disappearance, said that, if an extradition request based on that offence were received, the authorities would consider all the elements comprising enforced disappearance that were offences in Armenia and make their decision on that basis. There did not have to be an exact correspondence between the law of the requesting country and that of Armenia.

21. **Mr. Abgaryan** (Armenia) said that, under the Constitution, persons could be deprived of their liberty only as prescribed by law and that any deviation from that principle was deemed to be unlawful detention, which was considered to be a form of enforced disappearance. Although there had been no reports of failures to maintain detention

registers properly, the maintenance of registers and detention conditions were monitored by parliamentarians, the Prosecutor General, the Human Rights Defender and civil society organizations. The transfer of inmates from one centre to another was regulated by law, and inmates had the right to inform the person of their choice of their new location. Persons were placed in psychiatric facilities by court order if they were deemed to be a threat to society. When military personnel were detained, their families were always notified first and, where appropriate, their commanding officers were then notified. The legal status of victims and the designation of victims' legal successors were governed by the Code of Criminal Procedure and were determined by the courts. Law enforcement officers, the judiciary and members of the military received training regarding national and international human rights standards as they related to their particular functions.

22. **Ms. Avoyan** (Armenia) said that the Criminal Code set out penalties for offences such as the sale of children and adoption under false pretences, while the Family Code provided for the court-ordered annulment of adoptions under specific circumstances. Nevertheless, the amendments to the Criminal Code would address the situation of disappeared persons' children. Under the Family Code, relatives were given priority in the adoption of disappeared persons' children, and alternative arrangements were considered only if that first option was unsuccessful. The views of children over 10 years of age were taken into consideration in adoption proceedings. In addition to compensation, victims of enforced disappearance were entitled to the provision of basic necessities, medical services, rehabilitation services, accommodation and legal aid. In keeping with the principle of non-refoulement, the law prohibited the deportation of persons, including those residing in Armenia unlawfully, to countries where there was a risk of torture.

23. **Mr. Tumanov** (Armenia) said that Armenia was a party to the Convention relating to the Status of Refugees and thus recognized the principle of non-refoulement. Departures from that principle might be made in some cases, however, if an individual posed a threat to national security or a danger to society.

24. **Mr. Camara** asked whether the 72-hour limit on the duration of police custody could ever be extended. He wished to know whether Armenian law contained any provisions restricting the right to information as it pertained to the relatives or legal counsel of detainees, or whether such restrictions could be instituted at the discretion of police officers or public prosecutors. He requested clarification on the distinction made in article 142 of the Criminal Code between imprisonment and placement in detention.

25. **Ms. Janina** asked whether the Government would take under advisement the Committee's recommendation concerning the amendment of article 329 of the Criminal Code, which could pose an impediment to persons seeking international protection. She would also like to know whether Armenia accepted diplomatic assurances when returning asylum seekers to their countries of origin and wished to know how the State followed up on those cases to ensure that such assurances were honoured.

26. She wondered whether the detention registers referred to earlier included all the information required under article 17 of the Convention. She wished to know whether electronic registers were used in police stations, and would like the delegation to comment on the question as to how overcrowding and understaffing in prisons might interfere with the proper maintenance of registers. In her view, the definition of the term "victim" contained in the Criminal Code and the Code of Criminal Procedure was narrower than the one set out in article 24 of the Convention, which covered not only persons subjected to enforced disappearance but also their relatives or other loved ones who had suffered harm as a consequence of their disappearance. The written replies to the list of issues seemed to indicate that there was a three-year limit on victims' right to seek restitution, and she would appreciate clarification from the delegation on that matter.

27. **Mr. Huhle** said that he also was concerned that the definition of the term "victim of enforced disappearance" in Armenian law seemed to include only direct victims. The fact that one of a victim's relatives would be chosen as a legal successor would seem to indicate that the successors themselves were not considered to be victims. If that was the case, then Armenian law was not at all in line with the Convention in that regard.

28. **Mr. Corcuera Cabezut** requested clarification on the concept of a successor in Armenian law, as it appeared that a successor could be appointed even in cases where it was not known whether the disappeared person was alive or dead.

29. **Mr. Tumanov** (Armenia) said that there were no specific mechanisms in place for the assessment of the possible danger of a person being subjected to enforced disappearance in extradition cases. However, practical steps were taken to ensure that the rights of extradited persons were not violated. Requesting States were required to provide written assurances and to inform the sending State of any violations of an individual's rights. Armenian diplomats in other countries visited Armenian citizens in prison from time to time, and those visits could also help to minimize the risk of enforced disappearance. No person was ever extradited from Armenia to a State where the punishment would be the death penalty.

30. **Mr. Abgaryan** (Armenia) said that the 72-hour limit on police custody could not be extended under any circumstances and that, once that period had elapsed, the person had to be either released or charged. The relatives of a detained person were informed no later than 12 hours after his or her arrest. If the relatives lived abroad, they were informed within 24 hours. That time limit had been set to allow for any technical problems that might arise but, if there were no such problems, then the relatives would be informed immediately.

31. There were no electronic registers in police detention facilities, but such registers were used in detention facilities overseen by the Ministry of Justice. The registers contained all the information required under the Convention. It was his understanding that the only gap in the definition of victims set out in the Criminal Code related to actions prohibited under the Code, and that shortcoming would be remedied in the proposed amendments. Other than that, there was really no difference between the definition of the term "victim" in the Convention and the definition given under article 56 of the Criminal Code of Armenia. If a disappeared person were to be found alive after a successor had been appointed, that appointment would be revoked and the victim would retain the right to seek restitution. In cases where victims sought restitution after more than three years had passed since the commission of the offence, the compensation awarded would cover only the past three years. There was no statute of limitations in such cases, however, which meant that victims could seek restitution at any time.

32. **Mr. Camara** commended the delegation for the spirit of cooperation shown by its members. The constructive dialogue with the delegation had provided an opportunity to analyse the provisions of the Constitution, the Criminal Code and other relevant national laws. The issues raised by the Committee included the definition of the offence of enforced disappearance and whether it was considered to be a grave or extremely grave offence in Armenian law; the absolute prohibition of secret detention; the keeping of registers in detention facilities and penalties for failure to comply with that requirement; the right to information as it pertained to the relatives of detainees; the principle of non-refoulement; the definition of the term "victim"; the right to know the truth regarding the circumstances of an enforced disappearance and the fate of the disappeared person; and training on the Convention for police officers, administrative and prison staff, and judicial officials. The Committee took note with interest of the draft amendment to the Criminal Code, which contained a definition of the offence of enforced disappearance that was in line with the Convention. He encouraged the State party to continue its efforts to align all national legislation with the Convention.

33. **Ms. Janina** said that she wished to thank the delegation for its engagement with the Committee and its willingness to answer the many questions that its members had posed. While the State party had not yet completely fulfilled its obligations to codify specific offences relating to the Convention, she was heartened to see that a bill that would establish a new definition of the offence of enforced disappearance was under discussion. She encouraged the Government to hold broad discussions on the bill with civil society and the Office of the Human Rights Defender and to take the Committee's recommendations into consideration during that process.

34. She welcomed the State party's consideration of the possibility of accepting the competence of the Committee to receive and consider communications. She wished to remind the delegation that, while a proper legislative framework was important, it was even more important to ensure that the law was applied in practice. The Committee stood ready to cooperate with Armenia and all States parties to help raise awareness of the Convention and ensure its proper interpretation and implementation.

35. **Mr. Poghosyan** (Armenia) said that he would like to thank the Committee for its excellent work and said that all its concluding observations and recommendations would be studied carefully and taken into account. His delegation would provide answers in writing to any questions still pending.

36. **The Chairperson**, recognizing the importance of the issue of enforced disappearance in the State party's history, noted that Armenia had been one of the first countries to ratify the Convention and that it had submitted its initial report within the established time frame. He hoped that the Committee's comments would help to inform the development and adoption of new legislation. The delegation's transparency and willingness to respond to the Committee's questions was greatly appreciated.

*The discussion covered in the summary record ended at 12.45 p.m.*